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SYARIZAN SUDIRMIN & ORS

v.

ABDUL RAHMAN BUKIT & ANOR

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HIGH COURT MALAYA, IPOH
VT SINGHAM J
[CIVIL SUIT NO: 22-119-2001]
29 DECEMBER 2009

C ***TORT:*** *Damages - Award of damages - Aggravated damages - Suspect's claim of being assaulted, beaten and stabbed by policeman not proven - Aggravated damages not awarded*

TORT: *Damages - Award of damages - Exemplary damages - Suspect's*
D *motorcycle kicked by policeman during pursuit at high speed causing accident and severe injuries to suspect - Policeman's act unjustified, unacceptable and unlawful - Unauthorized, wilful, wrongful and oppressive act - High degree of foreseeability of accident and injury - Exemplary damages granted to mark court's disapproval of policeman's conduct*

E ***TORT:*** *Negligence - Contributory Negligence - Suspect riding motorcycle at high speed to avoid apprehension by police - Suspect not wearing crash helmet - Suspect's motorcycle kicked by policeman during pursuit at high speed causing accident and severe injuries to suspect - Whether suspect contributed to damages suffered - Liability apportioned at 75% against*
F *policeman and 25% against suspect*

TORT: *Damages - Cost of care - Victim paraplegic and wheel chair dependant for life - Maids may not be willing to provide service required by victim - Victim's father gave up job as fisherman to look after victim -*
G *Value of father's services to be compensated based on cost of engaging domestic help - RM500 per month awarded for cost of future care - RM200 per month awarded for cost of care rendered by father while victim still in hospital*

H ***TORT:*** *Negligence - Duty of care - Police - Duty of care owed by policeman to suspect he is pursuing - Duty to exercise reasonable care and skill - Whether act of kicking suspect's motor cycle while riding at fast speed and causing accident amounted to breach of duty - Claim for damages for severe injuries sustained by suspect - Maxim of ex turpi causa*
I *non oritur actio not applicable - Government vicariously liable for negligence of policeman*

The plaintiffs' claim against the defendants was for general and special damages arising out of serious injuries and loss suffered by the plaintiffs as a result of a tortious act committed by the first defendant. On 9 September 1999 at about 9pm, the first plaintiff (then aged 15 years) was riding his motorcycle with the second plaintiff as a pillion. On seeing a group of policemen at a distance ahead of him, the first plaintiff made a 'U' turn in an attempt to escape from the police as he was not wearing a crash helmet and had no license to ride a m/cycle. The first defendant then chased the plaintiffs on his m/cycle from the rear and when he came abreast with the plaintiffs, the first defendant kicked the plaintiffs' m/cycle. Both the plaintiffs fell with the m/cycle and suffered serious injuries and loss. The first plaintiff was now a paraplegia and was wheel chair dependant for the rest of his life. He also had to undergo further surgery on his buttocks for bed sore. The general and special damages apart, the first plaintiff also claimed exemplary and aggravated damages alleging that he was severely beaten, assaulted and stabbed by the first defendant after he had fallen down from the m/cycle and was lying on the road. The facts also showed that the first plaintiff's father had to give up his job as a fisherman to look after the first plaintiff.

Held (allowing claim in part):

(1) The plaintiffs had established on the balance of probabilities that the first defendant had kicked his m/cycle and that such act of kicking had caused him to lose control of the m/cycle resulting in both the plaintiffs to fall on the road. (para. 16)

(2) A policeman in pursuit owes a duty of care to the suspects he is pursuing. The standard of care on such policeman and in such situations is to exercise such care and skill as is reasonable in all the circumstances. In this case, the act of the first defendant in kicking the first plaintiff's m/cycle who was riding at a fast speed (even though he was attempting to escape police detention for a traffic offence) was most unjustified and unlawful. (para 16)

(3) In attempting to escape apprehension in the police pursuit, the first plaintiff however took a serious risk to himself and other road users in riding his m/cycle at such fast speed. Since the first plaintiff had contributed to the damage he suffered, the damages had to be reduced having regard to the first plaintiff's share in the responsibility for the damage. As for not wearing crash helmet, a reasonable prudent motorist in

A the position of the first plaintiff would have foreseen that the wearing of crash helmet might result is less harm or injury if he was involved in a collision. Accordingly, there should be a deduction on the damages to be awarded for this head of injury. (paras 18 & 19)

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(4) Exemplary or aggravated damages or vindictive damages may be awarded whenever it is found that the defendant's conduct is sufficiently outrageous, wilful and unlawful to merit such punishment. The court was not satisfied with the first C plaintiff's version that he was assaulted, beaten and stabbed after he fell or that the alleged assault was the effective cause of his severe injuries. Thus, aggravated damages were not awarded. (para 21)

D **(5)** The first plaintiff was entitled to exemplary damages in addition to compensatory damages. The act of kicking the first plaintiff's m/cycle to prevent him from escape for a mere breach of traffic regulations was unjustified, unacceptable and unlawful under the circumstances. It was an unauthorized, E wilful, wrongful and oppressive act. There was a high degree of foreseeability that the first plaintiff would lose control of his m/cycle and be thrown off his m/cycle by the wrongful act of kicking. The first plaintiff was now a wheel chair dependant. The award of exemplary damages was to mark the court's disapproval towards the unwarranted, wilful, oppressive and F wrongful conduct of the first defendant and to deter him from repeating it. On the facts, a sum of RM50,000 was reasonable as exemplary damages. (paras 22 & 23)

(6) The act of the first defendant was committed in the course of G his employment and the second defendant was vicariously liable for the negligent act of the first defendant. (para 25)

(7) The blameworthiness of the first defendant was higher than that of the first plaintiff. Accordingly, liability was apportioned H at 75% against the first defendant and 25% contributory on the part of the first plaintiff for his want of reasonable care for his own safety and failure to wear crash helmet that had contributed to the head injuries. (para 26)

I **(8)** The doctrine of *"ex turpi cause non oritur actio"* did not apply to the facts and circumstances of this case to prevent the plaintiffs from claiming damages for the tortious act of the first defendant. (para 26)

(9) In assessing the award for cost of domestic help, the court considered that not all maids employed will be willing to provide the service required of the first plaintiff. The first plaintiff's father had given up his job as a fisherman to look after the first plaintiff, as a full time domestic help. He must be compensated fairly and justly for the value of services rendered. It must be the same as if a domestic help was engaged to look after the first plaintiff. A sum of RM500 per month was a reasonable amount (para 30)

(10) Since the first plaintiff's father had given up his job as a fisherman and had spent time with the first plaintiff in the hospital during the 66 months, it was reasonable to compensate him for this notwithstanding the hospital authorities were there to look after him. Thus, a sum of RM200 per month for the 66 months was a reasonable amount under the circumstances. (para 30)

(11) As for the second plaintiff, a sum of RM5,000 was awarded on full liability as General Damages. Having taken into account 15% deduction for not wearing crash helmet which caused the facial injury, general damages was reduced to RM4,250. (para 31)

[Plaintiff awarded RM715,728.09 on 100% liability.]

Case(s) referred to:

London v. Ryder [1953] 1 All ER 741 ***(refd)***
Marappan Nallan Koundar & Anor v. Siti Rahmah Ibrahim [1990] 1 CLJ 32; [1990] 1 CLJ (Rep) 174 SC ***(refd)***
Marshall v. Osmond & Anor [1983] 2 All ER 225 ***(refd)***
Maslinda Ishak v. Mohd Tahir Osman & Ors [2009] 6 CLJ 653 CA ***(refd)***
Mohd Nor Afandi Mohamed Junus v. Rahman Shah Alang Ibrahim & Anor [2008] 2 CLJ 369 CA ***(refd)***
Rookes v. Banhard [1964] 1 All ER 367 ***(refd)***
Taylor v. Bristol Omnibus Co [1975] All ER 1107 ***(refd)***
Vijayan Kunju Kunju v. Yunos Dollah & Anor [1993] 3 CLJ 677 HC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 12(1)
Government Proceedings Act 1956, ss. 5, 6(1)
Motor-Cycles (Safety Helmets) Rules 1973, r. 4
Penal Code, s. 338

A *For the plaintiffs - Ngeh Koo Ham (Kartini Mansor with him); M/s Ngeh & Co*
For the 1st defendants - Abdul Roni Abdul Rahman; M/s Abdul Roni & Co
For the 2nd defendant - Amarjit Singh SFC; A-G's Chambers

B *Reported by Amutha Suppayah*

JUDGMENT

VT Singham J:

C **[1]** The plaintiffs' claim against the police Lans Corporal, Abdul Rahman bin Bukil (the first defendant) and the Government of Malaysia, the second defendant is for damages, both the general and special damages under the Law of Tort. The claim for damages, arose out of serious injuries and loss suffered by the plaintiffs as a result of a tortious act committed by the first defendant on 9 September 1999 at about 9.15pm at Jalan Besar Pasir Bogak, Pangkor, an employee of the second defendant, the Government of Malaysia.

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Facts

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[2] On 9 September 1999 at about 9pm at along Jalan Pasir Bogok, Pangkor, the first plaintiff, Syarizan bin Sudirmin, age 15 years (at the time) was riding m/cycle No. ADE 4283 with the second plaintiff, Zuraidah bt. Umar, aged 15 years (at the time) was a pillion. On seeing a group of policemen at a distance ahead of him, the first plaintiff who was travelling towards Teluk Nipah made a 'U' turn and proceeded towards Pangkor town in an attempt to escape from the police as he was not wearing a crash helmet and had no license to ride a m/cycle. The third plaintiff, Sani bin Ahmad claimed to be the registered owner of the m/cycle ADE 4283 which the first plaintiff was riding. The third plaintiff's claim is for damages for cost of repairs to his m/cycle which was damaged. The first defendant, a police constable was riding m/cycle No. BEU 187 at the time of the actual incident.

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[3] The first plaintiff had testified that, while he was riding the m/cycle No. ADE 4283 with the second plaintiff as his pillion towards the Pangkor town after having made a 'U' turn to escape the police for traffic offences, namely, for not wearing crash helmet and not having license to ride a m/cycle, the first defendant who chased him on m/cycle No. BEU 187 from the rear, came abreast

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with him and kicked his m/cycle and both the plaintiffs fell with the m/cycle. As a result they have suffered serious injuries and loss. (Note: the first defendant also fell but he got up). A

[4] The first plaintiff suffered serious injuries and he is now a paraplegia and is a wheel chair dependant and he will be the same for the rest of his life. (see medical report dated 23 March 2000 from Hospital Sri Majong, Medical Report dated 12 September 2000 from Hospital Ipoh, Medical Report dated 18 December 2000 from Hospital Ipoh, Specialist Report dated 26 December 2000 (P14) by Dr. Abd. Shukor Mohd Hashim of Institute of Orthopedic and Traumatology Hospital Kuala Lumpur, Specialist Report dated 9 February 2001 (P15) by Dr. Abd Shukor Mohd Hashim, Medical Report dated 22 June 2001 from Hospital Kuala Lumpur, Medical Report dated 22 March 2004 by Dr. Abd. Shukor b. Hashim (P16), Specialist Report dated 25 August 2007 by Dr. Abd. Shukor b. Hashim). The first plaintiff was readmitted to Hospital Kuala Lumpur on 13 May 2005 till 31 May 2005 where he underwent a further surgery on his buttocks for bed sore as his skin become rotten. He cannot sit for long time and has to lift his buttocks. While he was giving evidence in court, he was seated on the wheel chair and he had to lift his buttocks very often and had to pause before he continued with his evidence. The first plaintiff said he had his crash helmet with him but he did not wear it. B C D E

[5] The first plaintiff has further claimed exemplary and aggravated damages. He has alleged that he was severely beaten, assaulted and stabbed by the first defendant after he had fallen down from the m/cycle and was lying on the road after the first defendant had kicked his m/cycle. F

[6] The second plaintiff (pillion rider), Zuraidah bt. Omar, had also testified that the first defendant had kicked their m/cycle, the first time he kicked, it hit her right leg (paha), the second time the first defendant kicked, it hit the right rear side of the m/cycle. The first plaintiff (rider) then lost control of the m/cycle and they were both thrown off the m/cycle onto the road. She then became unconscious. Her evidence is supported by her police report (exh. P18). The second plaintiff suffered injuries as per the medical report dated 27 September 1999 from Klinik Kesihatan Pangkor. G H

[7] The evidence of both the first and second plaintiff is consistent and is supported by the second plaintiff's police report that the first defendant had kicked the m/cycle they were riding which caused them to fall and suffer injuries. I

[8] Whereas the first defendant's defence is that, the first plaintiff lost control of the m/cycle as he was riding at a fast speed in an attempt to escape the police. He had seen from a distance that the first plaintiff was not wearing a crash helmet. Therefore, it was contended on behalf of the defendants that the plaintiff is the author of his own misfortune and have pleaded *'ex turpi causa non-oritur actio'* (an action does not arise from an act which the law forbids) and alternatively, the defendant have pleaded contributory negligence against both the plaintiffs.

[9] However, the defendants have conceded (bersetuju) that the first defendant was acting in the course of his employment with the Government of Malaysia at the material time and the second defendant as the Government of Malaysia will be vicariously liable provided the first defendant is found liable as provided under s. 5 and s. 6(1) of the Government Proceedings Act 1956.

Section 5 states:

> **Liability of the Government in tort**
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> 5. Subject to this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

Section 6(1) states:

> **Limits of liability of the Government**
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> 6. (1) No proceedings shall lie against the Government by virtue of section 5 in respect of any act, neglect or default of any public officer, unless proceedings for damages in respect of such act, neglect or default would have lain against such officer personally.

[10] The first defendant had testified that on 9 September 1999 at about 9pm, he was with five other policemen on patrol duty for crime prevention and to check the public and motor vehicles at Jalan Pasir Bogak, Pangkor as instructed by C/Insp. Tan Gear Boe, the OC in charge of the Pangkor police station. The first defendant had also testified that after the incident he alone was instructed to leave Pangkor. The other five policemen were not asked to leave

Pangkor. The first defendant had also said that he was asked to leave Pangkor as hundreds of people had gathered at the police station to show their anger and dissatisfaction against the police and him, and it was the first time that the public had gathered at the Pangkor police station. He also admitted that although other motorists had previously been stopped and summoned for not wearing crash helmet, there was no such incident where the public gathered at the police station. He was instructed to leave Pangkor as the people who gathered at the police station had demonstrated (mass protest) to show their anger and dissatisfaction against the police and him as to what had happened.

[11] The first defendant had also said he did not carry with him the 'traffic stop signs' when he was on patrol duty on crime prevention. He also said that he called the first plaintiff to stop as he was chasing him but the first plaintiff did not stop. (Note: However, both the plaintiffs have said they did not hear the first defendant calling them to stop).

[12] Lans Corporal Hussin bin Hashim, one of the five policemen who were on patrol duty at the time with the first defendant was called as the first defendant's witness to support his defence. However, he testified that he only came to the scene after both the plaintiffs and the first defendant were lying on the road. Lans Corporal Hussin bin Hashim was not of any assistance to the first defendant to support his version of how the plaintiff fell from their m/cycle.

[13] The first plaintiff has claimed for general damages (for pain and suffering and loss of amenities), special damages, loss of earnings and expenses incurred by him and his father who was a fisherman and who gave up his job to look after him. The first plaintiff was a fisherman helping in his father's business and sells burger during weekends on a part time basis. He claims he was earning a sum of RM1,300 per month. The first plaintiff has also claimed for cost of domestic help to look after his needs and for cost of wheel chair, cost of urine bag, catheter and diapers.

Decision

[14] Having seen the demonstration by the parties as to how this unfortunate incident occurred, namely, how the first defendant came abreast close to the first plaintiff's m/cycle with his m/cycle when he kicked the plaintiff's m/cycle as a result of which both the plaintiffs were thrown of their m/cycle, this court accepts the version

of both the plaintiffs as described by them that the first defendant had kicked their m/cycle. This court is satisfied that the first defendant was negligent when he kicked the plaintiff's m/cycle as a result, the first plaintiff lost control of his m/cycle and fell. This court finds both the plaintiffs as truthful witnesses. On the other hand, this court rejects the first defendant's version that the plaintiffs fell off the m/cycle because the first plaintiff was speeding and could not control his m/cycle as he was speeding which this court finds it against the weight of the totality of the evidence.

[15] The first defendant's witness, namely, C/Insp M.D Amirthalingam, the Investigating Officer, was an honest witness, when he testified and said there was sufficient evidence to frame a criminal charge against the first defendant for causing grievous hurt to the first plaintiff under s. 338 of the Penal Code (ie, an Act so rash or negligent as to endanger life or the personal safety of the first plaintiff). However, C/Insp. M.D Amirthalingam had testified that there was no evidence to support from any of the witnesses that the first defendant had assaulted or stabbed the first plaintiff after he fell from his m/cycle. In fact the second plaintiff, the pillion rider herself could not support this allegation of assault by the first defendant as she was unconscious after the fall.

[16] The plaintiffs have established on the balance of probabilities that the first defendant kicked the m/cycle they were riding and that it was the act of kicking the m/cycle which caused both the plaintiffs to fall with the m/cycle and which resulted in the injuries suffered by both of them. Accordingly, this court is satisfied that the plaintiffs have established on the balance of probabilities that the first defendant kicked the plaintiffs' m/cycle and that the act of kicking the m/cycle caused the first plaintiff to lose control of his m/cycle where both the plaintiffs fell on the road. As a result, the first plaintiff suffered serious injuries and losses.

[17] A policeman in pursuit does owe a duty of care to the suspects he is pursuing. The standard of care on such a policeman and in such situations "is to exercise such care and skill as is reasonable in all the circumstances." (see *Marshall v. Osmond & Anor* [1983] 2 All ER 225). The act of the first defendant in kicking the first plaintiff's m/cycle who was riding at a fast speed and even though he was attempting to escape police detention for a traffic offence in the considered view of this court was most unjustified and unlawful. The act of kicking the first plaintiff's m/cycle with the intention of stopping him and even where the first

plaintiff was attempting to avoid apprehension surely is not an act condoned by his superiors. This is evident from the decision of the Investigating Officer who recommended that the first defendant be charged under s. 338 of the Penal Code. This court wishes to make it clear that the fact the first defendant was charged in court for an offence under s. 338 of the Penal Code was not a factor which this court had applied to determine negligence against him as the evidence produced by the plaintiffs was sufficient to establish negligence against the first defendant. It would be an affront to justice to condone such high handed manner as committed by the first defendant for a mere breach of traffic regulations ie, for not wearing crash helmet which has caused the first plaintiff, a minor at the time to be a wheel chair dependant for the rest of his life and suffer loss of amenities, and experience such unbearable discomfort.

[18] On the other hand, in attempting to escape apprehension in this police pursuit, the court is in agreement with the contention of the learned Senior Federal counsel, Mr. Amarjit Singh that the first plaintiff took a serious risk to himself and other road users in riding his m/cycle at such fast speed. Therefore, this court finds the first plaintiff had also contributed to the damage he had suffered. Accordingly, the damages have to be reduced as this court finds having regard to the first plaintiff's share in the responsibility for the damage. (see s. 12(1) of the Civil Law Act 1956).

[19] As for not wearing a crash helmet, a reasonable prudent motorist in the position of the first plaintiff's position would have foreseen that the wearing of crash helmet might result in less harm or injury being caused to his head by a third party in particular, this incident, or if he is involved in a collision while riding a m/cycle. Accordingly, there should be a deduction on the damages to be awarded for his head injury. As stated above, this court finds that there is also contributory negligence on the part of the first plaintiff. There was lack of reasonable care by the first plaintiff for his own safety and that by his want of reasonable care he had contributed to the damage suffered.

[20] Be that as it may, having regard to the totality of the evidence, this court finds that the first plaintiff has failed to establish on the balance of probabilities that the first defendant had assaulted and stabbed him after he had fallen and as he was lying on the road. There was no evidence to support the first plaintiff's allegation of the assault by the first defendant except for the first plaintiff's bare allegation.

A **Damages**

[21] The primary object of an award of damages is to compensate the plaintiff for the harm done or injury caused to him or her. It is well settled in law that the governing purpose of damages is to put
B the plaintiff whose rights have been violated in the same position as before, so far as money can compensate. However, in addition to the normal compensatory damages, damages which are called exemplary or aggravated damages or vindictive damages may also be awarded whenever, it is found that the defendant's conduct is
C sufficiently outrageous, wilful and unlawful to merit such punishment. Nevertheless, this court is not satisfied with the first plaintiff's version that he was assaulted, beaten and stabbed after he fell or that the alleged assault was the effective cause of his severe injuries. Therefore, on the set of facts in the instant case, this court
D is unable to award any aggravated damages.

[22] However, on the set of facts in the instant case, this court finds that the first plaintiff is entitled to exemplary damages in addition to compensatory damages. The act of kicking the first
E plaintiff's m/cycle to prevent him from escape for a mere breach of traffic regulations is unjustified, unacceptable and unlawful under the circumstances, and it is an unauthorized, willful, wrongful and oppressive act. On the set of facts, there was a high degree of foreseeability that the first plaintiff would lose control of his
F m/cycle and be thrown off his m/cycle by the wrongful act of kicking which in fact happened and turned out to be a disaster. The first plaintiff is now a wheel chair dependant. The award of exemplary damages is to mark the court's disapproval towards the unwarranted, wilful, oppressive and wrongful conduct of the first defendant and to deter him from repeating it. It is also to show
G that the first defendant cannot do that sort of act with impunity and it was out of all proportion to the circumstances of the case. (see *Rookes v. Banhard* [1964] 1 All ER 367; *London v. Ryder* [1953] 1 All ER 741).

H **[23]** Admittedly, the first defendant himself had transgressed the traffic regulations where the m/cycle he was riding at the material time did not have in force a road tax and third party insurance coverage for which admittedly, he was charged in court, convicted and fined by the Magistrate's Court, Sri Manjong. On the set of
I facts, a sum of RM50,000 would not be unreasonable as exemplary damages. The sum of RM10 million claimed by the first plaintiff is exorbitant and out of proportion and ought to be rejected.

[24] As stated above, while there is evidence that the first plaintiff was endeavouring to make his escape and avoid detention and he was not wearing a crash helmet and had no license to ride a m/cycle, there is admission that the first defendant himself who was riding the m/cycle had no road tax and insurance coverage to his m/cycle. In other words, the first defendant himself had transgressed the traffic regulations when he admitted riding the m/cycle without road tax and an insurance coverage where he was charged in court, convicted and fined.

Vicarious Liability

[25] This court also finds that the act of the first defendant was committed in the course of his employment and that the second defendant is vicariously liable for the negligent act of the first defendant. (see s. 5 and 6 of the Government proceeding Act; *Mohd Nor Afandi Mohamed Junus v. Rahman Shah Alang Ibrahim & Anor* [2008] 2 CLJ 369; *Maslinda Ishak v. Mohd Tahir Osman & Ors* [2009] 6 CLJ 653).

[26] Be that as it may, on the set of facts, in terms of degree of liability, this court finds that the blameworthiness of the first defendant was higher than that of the first plaintiff. Accordingly, liability is apportioned at 75% against the first defendant and 25% contributory on the part of the first plaintiff for his want of reasonable care for his own safety and would include his failure to wear crash helmet that had contributed to the head injuries. (see *Vijayan Kunju Kunju v. Yunos bin Dollah and Anor* [1993] 3 CLJ 677, r. 4 of Motor-Cycles (Safety Helmets) Rules 1973). The doctrine of *"ex turpi cause non oritur actio"* does not apply to the facts and circumstances of this case to prevent the plaintiffs from claiming damages for the tortuous act of the first defendant. Accordingly, both the plaintiffs are entitled to claim for damages under the law of Tort.

[27] There is no award for the third plaintiff as he had admitted that his m/cycle has still not been repaired and there is no documentary evidence to warrant any award even for total loss of value to his m/cycle as there is no evidence to support such a claim.

[28] In any event and based on 100% liability and having considered the cases referred by both parties, the first plaintiff is awarded damages as follows:

General Damages

i. Paraplegia	
Complete motor and sensory neurological deficits and lower limbs, urinary and bowel control due to fracture dislocation of 5th and 6th thoracic vertebrae. Loss of sexual function. Surgical operations. Surgical scars and pressure sore scars. Kyphus deformity over thoracic spine may progress and result in chronic pain. Fracture of right and left femur. Lung Contusion and abrasions. Wheel-chair existence.	RM300,000
ii. Head injury	
Head injury-left parietal lobe contusion and diffuse cerebral oedema. No evidence of any mental disabilities. Treatment only consisted of antibiotics and intermittent intravenous manitol to reduce the cerebral oedema.	RM15,000
iii. Nursing Care	
(1) Plaintiff was 16 years at the time of injury and was hospitalized for 66 months (5 ½ years) (9.9.1999-8.3.2005). A sum of RM200.00 per month for 66 months for the first plaintiff's father (PW3) is not unreasonable.	
RM200 x 66	RM13,200
(2) Medical evidence (Specialist Report dated 25.8.2007 by Dr. Abd. Shukor bin Hashim (exh. P17) states the first plaintiff's life expectancy is 30-40 years ie, 46-56 years old. Taking 55 years - 16 years (at time of accident) - deducting 66 months (where he was taken care at the hospital) leaves 342 months	
RM500 x 342	RM171,000

iv. Loss of Earnings A reasonable sum would be RM500.00 per month as proposed by learned SFC. (as s.28A (2) (d)(i) of the Civil Law Act 1956). Insufficient evidence to support he was earning RM1,300.00 per month and considering he was only 15 years old at the time of his injury.	(RM500 a month x 12 months x 16 years) RM96,000
According to the evidence of En. Abd. Rahman b. Mukri (SP4) the following items were being supplied by the second defendant (Government) and will cease if judgment is given in favour of the first plaintiff. Therefore, assessment of the award to be given by this Court only starts after the date of judgment. From 1.1.2010, the calculation is as follows:	
v. Wheel-chair 7 wheel chairs @ RM1,450 each from Jan 2010 RM1,450 x 7	RM10,150
vi. Roho Cushion 7 cushions @ RM1,600 each from Jan 2010 RM1,600 x 7	RM11,200
vii. Urine bags 10 pieces of bags in a box - RM20 1 month - 10 pieces 56 years - 26 years = 30 years 30 x 12 x RM20	RM7,200
viii. Urinary Catheter 10 pieces in a box 1 box - RM30 56 years - 26 years = 30 years 30 x 12 x RM30	RM10,800

ix. Disposable diapers 10 diapers @ RM40 10 pieces a month 3 times per day (Morning, evening and night) 480 months x 40 (see Specialist Report dated 23.3.2000)	RM19,200
x. Commode wheel chair (for bathing)	No award. There is no medical evidence to support.
xi. Agreed special Damages	RM11,978.09
xii. Exemplary Damages	RM50,000
xiii. Aggravated Damages	No award

Second plaintiff: Based on 100% liability, damages is as follows:

Swollen and tender left cheek and lacerated wound 1cm inside mouth. Tender and swollen lower half of left arm. Tender right thigh and unable to raise right lower limb due to pain.	RM5,000
However, taking into account she was not wearing crash-helmet and her admission that she would not have suffered the injuries if she had worn the crash helmet, there should be deduction of 15% contribution.	RM4,250

Third plaintiff:

Special Damages Repairs to motorcycle	No award as mo repairs made and no evidence to support.

The plaintiffs are awarded costs and interests as follows:

Costs of the action to be agreed or taxed

Interest

Interest at 4% per annum on general damages from date of service of writ to the date of judgment. (29.12.2009)

Interest at 8% per annum on agreed special damages from date of incident on 9.9.1999 till date of judgment. (29.12.2009) and on costs of nursing care from the date of discharge from hospital till date of judgment (29.12.2009)

Interest at 8% per annum from date of incident on 9.9.1999 till date of judgment on 29.12.2009 for loss of earnings. (123 months)

Interest at the rate of 8 % per annum on the total judgment sum from the date of judgment till date of satisfaction. (see O. 42 r. 12 of RHC 1980)

[29] In considering the award of RM300,000 as general damages for the pain and suffering and loss of amenities, this court has taken into account the following factors:

1. He was hospitalized for the total period of 5 ½ years.
2. There is no hope that his paraplegia conditions will improve.
3. He has undergone various operations and treatment and he had to endure extensive and prolonged misery of agony.
4. He has no control of bladder or bowels.
5. There have to be mechanical evacuation of faeces and is done approximately three times a day. There has to be evacuation of urine by catheter.
6. His brain and intelligence are unimpaired.
7. He has to be moved frequently to avoid body sores if he is too long in one position.
8. He suffers a great amount of discomfort.
9. He has lost almost all the amenities.
10. He has lost the chances of employment and of the pleasures and excitements that add to the brightness of life.
11. His life is one of constant discomfort and constant expense. (see *Morey v. Woodfiled* [1963] 3 All ER 533)
12. He will get complications like pressure sore and urinary tract infections from time to time.

13. He is not going to recover from the permanent disabilities and they are permanent, life long.

14. Awards in the past require adjustment for change in the value of money which has to be reflected in the award. The Court must keep pace with the time.

15. The conventional scale for guidance with adjustments for the change in the value of money.

[30] Nursing Care

(1) In assessing the award for cost of domestic help, this court has considered that not all maids employed will be willing to provide this service required of the first plaintiff. In this case, the first plaintiff's father had given up his job as a fisherman to look after his son, the first plaintiff, as a full time domestic help. He must be compensated fairly and justly for the value of services rendered. It must be the same as if a domestic help has been engaged to look after the needs of the first plaintiff. (see *Taylor v. Bristol Omnibus Co.* [1975] All ER 1107 which was followed in *Marappan & Anor v. Siti Rahmah Ibrahim* [1990] 1 MLJ 99. This court is of the considered view that a sum of RM500 per month is a reasonable amount

RM500 x 342 = RM171,000

(2) However, since there is evidence that the first plaintiff's father (PW3) had given up his job as a fisherman and had spent time with the first plaintiff in the hospital during the 66 months, it is only reasonable that he should also be compensated when considering the nature of the help that was required of him as a father based on the nature of the injuries and the physical condition of the first plaintiff and the fact that the first plaintiff was only 16 years old at the time notwithstanding the hospital authorities were there to look after him.

(3) The first plaintiff's counsel had informed the court on 29.8.2006 that the first plaintiff will not be claiming damages for nursing care and loss of earnings of PW3 while he was in hospital. Nevertheless, the first plaintiff's counsel did indicate that he would submit for the court to take into account the incidental loss suffered during the time when awarding damages. However, the sacrifices of the first plaintiff's father in giving up his earnings out of necessity to be with his disabled son, who was a minor at the time should be given due consideration by the court. Notwithstanding the concession and having considered

the submission made by learned counsel for the first plaintiff, a sum of RM200 per month for the 66 months would not be an unreasonable amount under the circumstances (RM200 x 66 months = RM13,200)

[31] On 100% liability, the award for the first plaintiff are as follows:

(1)	(i)	General Damages for pain and suffering and loss of amenities (Paraplegia)	RM300,000.00
	(ii)	Damages for head injury	RM 15,000
(2)		Agreed Special Damages	RM 11,978.09
(3)		Exemplary Damages	RM 50,000.00
(4)		Compensation for the first plaintiff's father while he was in hospital with the first plaintiff for 66 days. (Nursing care)	RM 13,200.00
(5)		Cost of nursing care (domestic help)	RM171,000.00
(6)		Loss of earnings	RM 96,000.00
(7)		Cost of Wheel Chair	RM 10,150.00
(8)		Cost of Roho Cushion	RM 11,200.00
(9)		Cost of Urine Bag	RM 7,200.00
(10)		Cost of Urinary Catheter	RM 10,800.00
(11)		Cost of Disposal Diapers	RM 19,200.00
		Total	**RM 715,728.09**

As for the second plaintiff, a sum of RM5,000 is awarded on full liability as General Damages. Having taken into account 15% deduction for not wearing crash helmet which caused the facial injury, general damages is reduced to RM4,250.

All the awards to the first plaintiff is subject to a deduction of 25% for contributory negligence on the total award. As for the second plaintiff, a deduction of 15% is made on the award of RM5,000 for her facial injuries for not wearing crash helmet. Costs and interests are awarded as stated above.